



Thursday, January 31, 2008

To: Members, Assembly Judiciary Committee

From: Susan McMurray
AFSCME Council 11 Legislative Representative

Re: AFSCME support for AB 695, relating to John Doe modifications

AFSCME supports legislation to change the state "John Doe" law to protect public employees from being harassed by offenders. This bill would cover state and county corrections officers, probation and parole officers as well as those who work in mental health institutions and among sex offenders.

Currently, anyone can file a complaint with a judge alleging that there is a possibility that a crime has been committed. The current "John Doe" law allows inmates to bypass local investigations and force judges to initiate proceedings without evidence proving whether or not a crime has been committed. Charging people with a crime should never be done without serious consideration, but that did not happen in a case involving an AFSCME member who is here today to testify about his experience.

Waupun Correctional Officer Gabe Umentum, a 24-year-old officer with an impeccable record of service, has been charged with a felony based on allegations of abuse by an offender with a long history of making false accusations against staff. The Department of Corrections did a thorough investigation of the inmate's complaints and found them to be baseless. In addition, the district attorney also conducted an investigation and also could find no evidence of wrongdoing by this officer.

However, due to a flaw in the John Doe process that even Dodge County Judge Andrew Bissonnette freely acknowledges, Officer Umentum is facing felony charges. He and his wife are scrambling for resources to pay for an attorney. To add insult to injury, Officer Umentum will have a permanent CCAP record.

Charges against Officer Umentum were filed last fall. Since then, inmates in the Wisconsin correctional system having been having a field day, knowing that they easily harass staff by filing John Doe petitions or even merely threatening to file John Doe petitions. Every correctional institution in this state has been affected by this case. We understand that there are 4-5 new John Doe cases underway, and the number of John Doe petitions is increasing.

Staff are fearful of doing their jobs, which puts the institutions, the inmates and the officers at great risk. Security has been compromised and the staff work who in the institutions are under tremendous stress. The situation is urgent and we need support from our state lawmakers.

AFSCME backs legislation to change the law to prevent workers from being faced with frivolous but costly and damaging charges stemming from baseless complaints by inmates.

Please support AB 695, which would confine its use to an investigatory tool for prosecutors in cases involving state and county corrections staff and DHFS staff.

Thank you. Please call me at 279-9697 if you have questions or comments about our union's support for John Doe reform or any other matter affecting Wisconsin's state, county or municipal employees.

BRANCH THREE
DODGE COUNTY CIRCUIT COURT
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**Testimony of Judge Andrew Bissonnette before
the Assembly Committee on Judiciary and Ethics
January 31st, 2008**

In the ordinary course of events, criminal charges are brought by the District Attorney's office. However, if the DA has elected not to issue a charge in a particular case, the aggrieved citizen (the alleged victim) may petition a judge directly in a John Doe proceeding under Wis. Stat. §968.26 to have the judge review the case and issue the criminal charge. If the petition alleges facts which, if true, would constitute a crime, then the judge is required to conduct an evidentiary hearing.

A John Doe hearing is not like a trial, however. It is more like a preliminary hearing in a felony case. The court has to limit its focus to whether or not the petitioner puts in a plausible account of a crime taking place. In other words, is the described event something that plausibly could have happened, as opposed to credibility, where the question would be whether the event likely happened. If a merely plausible account is rendered, the judge is compelled to issue a criminal complaint in the case. The judge may not consider the credibility of the witnesses, nor weigh the evidence on each side of the issue.

The issuance of a felony complaint against a correctional officer in such a case may well cause extreme emotional and financial distress for the officer and his family. This is so, despite the fact that there may be little prosecutive merit to the charge. It may take several months and many thousands of dollars for attorneys fees to try and clear the officer's good name.

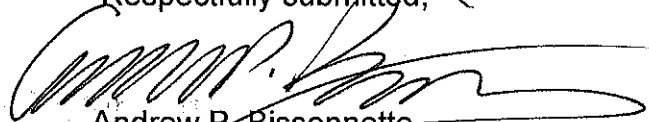
There have been a significant number of John Doe petitions filed in the recent past by inmates located in state correctional facilities within Dodge County. (Approximately 30 in 2007.) There is a perception that inmates are abusing this

process in order to harass correctional staff. In fact, the current John Doe statute allows inmates to freely use the courts like a blunt instrument against DOC staff. I say that because the prevailing John Doe caselaw prohibits trial courts from considering any evidence opposed to the petitioner's case, such as police reports, DOC investigative reports, or even the testimony of witnesses. While the judge is allowed to hear the testimony on both sides of the issue, the court in a John Doe proceeding is prohibited from weighing the evidence and from making any determination of credibility. The judge has no authority to even consider the prosecutive merit of the case. (Note that District Attorneys also have the right to bring a John Doe petition for purposes of conducting a confidential investigation before a judge. However, at the end of such proceeding DAs are ethically prohibited from bringing charges that lack prosecutive merit....inmates are under no such ethical restrictions.)

A good solution to the problem may be to revise the statute to prohibit inmates from using this procedure against prison staff. AB 695 is such a proposal, and I urge your serious consideration of this Bill. This same kind of solution was utilized to bar certain claims of inmates when they were arguably abusing the Open Records statute.

Until such changes are made, judges have a sworn duty to uphold the law as it stands. In the absence of a legislative fix, prison inmates still have full access to the John Doe procedure. Therefore judges, including me, are required to review the inmates' petitions and to conduct hearings where the law requires it. If we fail to conduct hearings where required, we may get reversed by the Court of Appeals, as happened in two Dodge County inmate John Doe cases in 2007. Therefore **the solution can not be for judges simply to turn a blind eye to the law. The solution has to come from you, the legislature.**

Respectfully submitted, \



Andrew P. Bissonnette

Dodge County Circuit Judge

THE PRISON MINISTRY PROJECT

REV. JERRY L. HANCOCK, J.D., M.Div.
DIRECTOR

I am the Rev. Jerry Hancock, Director of the Prison Ministry Project of the United Church of Christ. I appreciate the opportunity to testify in opposition to AB 695. I believe that this bill is a very serious challenge to the ideal of fundamental fairness that is so important to the citizens of Wisconsin. This legislation does serious damage to our belief in the separation of powers and the need to hold people in power accountable for their actions.

Prior to becoming an ordained minister, I spent more than thirty years as a lawyer in the criminal justice system, including serving as the Administrator of the Division of Law Enforcement Services when Governor Doyle was Attorney General. As a result of that experience, I am well aware of the serious problems of frivolous lawsuits and overcrowded court dockets. But by placing these inmate allegations of abuse in the hands of the office of the District Attorney—which is, like the Department of Corrections, an Executive Branch agency—this bill prevents exactly the kind of independent review that the people of Wisconsin have long found essential to good government.

The actions of this legislature are subject to Judicial Review. Allegations of criminal misconduct by rogue employees of the Department of Corrections deserve the same treatment.

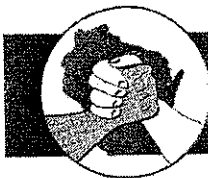
I recognize that the volume of these complaints could pose a problem to courts in those counties, like Dodge, which have an inordinate number of correctional facilities. However, those venue problem could be mitigated by such relatively simple solutions as giving the State Court Administrator the authority to assign these cases to judges in other counties for initial review. Such a solution could help alleviate the burdens on any particular county without destroying this important access to the courts that all Wisconsin citizens enjoy.

Rev. Jerry L. Hancock, J.D., M. Div.
Director, The Prison Ministry Project
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Wisconsin State AFL-CIO ...the voice for working families.

David Newby, President • Sara J. Rogers, Exec. Vice President • Phillip L. Neuenfeldt, Secretary-Treasurer

To: Assembly Judiciary and Ethics Committee
From: Phil Neuenfeldt, Secretary-Treasurer
Date: January 31, 2008

Re: **Support for Assembly Bill 695**
Modification to *John Doe* Proceeding

The Wisconsin State AFL-CIO Executive Board voted unanimously to support AB 695 which would help protect public employees—specifically corrections officers, probation and parole officers, as well as those who work in mental health institutions—from being harassed by a misuse of the *John Doe* process by offenders. This is viewed as a worker rights issue that is beyond the ability of union members to address within the collective bargaining process.

AB 695 addresses the growing abuse of the state's *John Doe* proceeding which allows anyone to bypass an investigation by the local district attorney and file a complaint directly with a judge alleging that a crime has been committed. The scope of the investigation is at the discretion of the judge and he/she can decide to charge an individual with a crime. Some inmates are harassing correctional officers by requesting judges to initiate proceedings against the officers based on unsubstantiated complaints. An officer with an excellent work history at the Waupun Correctional Institution has been charged with felony abuse of an inmate through this misuse of the *John Doe* proceeding, despite the fact that both the Department of Corrections and the Dodge County District Attorney thoroughly investigated the inmate's claims and found them baseless. As knowledge of this manipulation of the *John Doe* proceeding spreads within the correctional system, inmates can intimidate correctional officers by simply threatening to use this process.

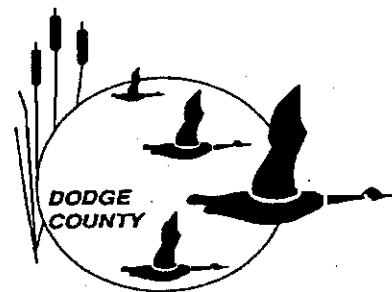
AB 695 would clarify that individuals within our criminal justice system would be limited to filing a complaint with a district attorney when it relates to actions of certain public employees under certain circumstances. This legislation will balance access to our legal system for offenders with protections that are needed for dedicated public sector employees and the security of our correctional institutions. We urge your support.

PN/JR/mj:opeiu#9,afl-cio,clc

OFFICE OF THE DISTRICT ATTORNEY

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1/30/2008

Representative Jeff Fitzgerald
Room 214 West
State Capitol
P.O. Box 8952
Madison, WI 53708

RE: (AB 695)

Dear Representative Fitzgerald:

Please accept this letter as my testimony in favor of AB 695. A John Doe proceeding is used by prosecutors in situations where individuals refuse to speak with law enforcement officers regarding a potential crime. In those circumstances, potential witnesses can be subpoenaed and then compelled to testify against others about a potential crime.

Currently, the John Doe statute is being used by inmates incarcerated in prison to harass the very correctional officers charged with watching over them. The current statute allows inmates to start John Doe proceedings against correctional officers which then forces a judge to institute an investigation of correctional officers. Inmates get a chance to disrupt the life of correctional officers, while the taxpayer has to pay for transporting these inmates to and from prison to court.

In many of the John Does brought by inmates, law enforcement has exhaustively investigated the allegations of the inmates, and a prosecutor has reviewed these reports and made a decision not to prosecute. In fact, in one case brought in Dodge County, I personally reviewed the file, which included a lay witness who was the area of the alleged incident at the time of the incident and reported hearing and seeing nothing, and made the decision that the allegation was not believable. In other cases, I knew nothing of the allegations.

Correctional officers already have a challenging job dealing with some very difficult people. I urge the legislature to pass legislation to eliminate this abuse of the John Doe Statute.

If you have any questions, feel free to contact me.

Very truly yours,

Steven Bauer

Steven G. Bauer
District Attorney
Dodge County

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